

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 90946-001

v

Blue Cross Blue Shield of Michigan

Respondent

/

Issued and entered
This 9th day of September 2008
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On July 14, 2008, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901, *et seq.* The Commissioner reviewed the request and accepted it on July 21, 2008.

The Commissioner notified Blue Cross Blue Shield of Michigan (BCBSM) of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's response on July 30, 2008.

The Petitioner's group health care coverage is defined by the BCBSM *Community Blue Group Benefits Certificate* (the certificate). The issue in this external review can be decided by an analysis of this contract. The Commissioner reviews contractual issues pursuant to section 11(7) of the PRIRA, MCL 550.1911(7). This matter does not require a medical review by an independent review organization.

II FACTUAL BACKGROUND

On March 19, 2007, the Petitioner had an outpatient colonoscopy performed at the XXXXX, a freestanding ambulatory surgery facility in XXXXX. The facility charge for this care was \$5,900.00. BCBSM denied payment for this facility fee since XXXXX does not participate with any BCBS plan.

BCBSM says it overpaid the physician's fee for the Petitioner's colonoscopy and initially intended to retrieve the overpayment. However, BCBSM later decided not to recover any overpayment. Therefore, the only issue in this case is BCBSM's denial of the facility charge.

The Petitioner appealed BCBSM's denial. BCBSM held a managerial-level conference on May 7, 2008, and issued a final adverse determination dated June 3, 2008. The Petitioner exhausted BCBSM's internal grievance process and seeks review by the Commissioner under PRIRA.

III ISSUE

Is BCBSM required to pay a facility charge for the Petitioner's March 19, 2007, colonoscopy?

IV ANALYSIS

Petitioner's Argument

The Petitioner says that she went to XXXXX to have her colonoscopy because her doctor's office advised her to do so and that her doctor will only do colonoscopies at this center. She says she was assured by her doctor's office that her care would be a covered benefit under her insurance. The Petitioner wants BCBSM to reconsider its denial of the March 19, 2007, facility charge.

BCBSM's Argument

Regarding freestanding ambulatory surgery facility services, the Petitioner's certificate

states in *Section 3: Coverage for Hospital, Facility and Alternative to Hospital Care*:

We pay for medically necessary facility services provided by a BCBSM **participating** ambulatory surgery facility.

The certificate goes on to say in that same section, under *Services That Are Not Payable*:

We do not pay for:

- Services by a **nonparticipating** ambulatory surgery facility

The certificate further says on page 3.50:

BCBSM does not pay for services at nonparticipating outpatient physical therapy facilities, mental health or substance abuse treatment facilities, freestanding ambulatory surgery facilities, freestanding ESRD facilities, home health care agencies, hospice programs, skilled nursing facilities or for services provided by nonparticipating home infusion therapy providers. [Bold in original, underlining added]

BCBSM says the certificate explicitly excludes from coverage services provided by a nonparticipating freestanding ambulatory surgery facility. The outpatient surgery facility where the Petitioner's colonoscopy was performed is a freestanding outpatient surgery facility that does not participate with BCBSM or any other BCBS plan. As such, BCBSM believes that it correctly denied reimbursement for the center's service.

Commissioner's Review

The certificate describes how benefits are paid and the certificate language is clear: the facility fee of a freestanding ambulatory surgery facility is covered only if it participates with BCBSM or another Blue Cross Blue Shield plan.

BCBSM's assertion that XXXXX does not participate with BCBSM or any other BCBS plan is not in dispute -- no information in the record indicated that the center participates with any Blue Cross plan. The Commissioner therefore finds, since the facility where the Petitioner received her colonoscopy is nonparticipating, that the facility fee charged for this care is not a covered benefit under the Petitioner's certificate.

BCBSM's final adverse determination of June 3, 2008, is upheld. BCBSM is not required to cover the facility fee related to the Petitioner's March 19, 2007, colonoscopy.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.